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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,853	12/11/2001	Gholam-Reza Zadno-Azizi	VGEN.001A	6673

20995 7590 03/29/2006

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EXAMINER

WILLSE, DAVID H

ART UNIT PAPER NUMBER

3738

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/020,853	Applicant(s) ZADNO-AZIZI ET AL.	
	Examiner Dave Willse	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 27-39, 43-89, and 91-95 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-17, 27-39, 43-69 and 94 is/are allowed.
- 6) ☒ Claim(s) 70-89, 91-93 and 95 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The Applicant's amendment to the specification (filed on January 13, 2006) is acceptable to the examiner. However, the Applicant should have numbered the paragraph as **0109** rather than **0116** because amendments are made relative to the disclosure in the application file rather than any pre-grant publication. Attention is directed to MPEP § 714. The examiner has corrected the numbering, so the Applicant need not submit another revision to this paragraph of the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 95 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 95, line 27, "said optic" is vague as to which of the "posterior optic" and the "anterior optic" is being referenced; on the last line, "a posterior of the bag" is vague and indefinite as to whether a capsular bag posterior *volume* or posterior membrane *wall* is juxtaposed with the posterior optic. (For purposes of the art rejection applied below, "a posterior of the bag" is taken to mean "posterior capsule"; if the term is supposed to have a broader meaning, then other art, including other embodiments disclosed by Sarfarazi, may be applicable.)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 70-89, 91-93, and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarfarazi, US 6,488,708 B2, which specifies movement of the anterior optic **42** relative to

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the posterior optic 44 to effect “a power correction of approximately 4 diopters” (column 8, lines 53-58), with the motion of the posterior optic 44 (relative to the eye) being substantially zero, as seen from Figure 10; column 5, lines 1-12; and column 14, lines 15-18. The anterior optic is biased toward the accommodated position, as seen from column 3, lines 47-59; column 18, lines 20-26; and several other passages. [The anterior and posterior biasing elements have different geometries, as explained below in the examiner’s response to the Applicant’s remarks; moreover, “allow” (present claim 70, line 19) is deemed to be a passive term.] Sarfarazi lacks explicit mention of combined powers for the embodiment illustrated in Figures 3-5 and 8-10, but values within the range of 10 to 30 diopters would have been immediately obvious, if not inherent, in order to correct the vision of a substantial subset of hyperopic and presbyopic patients (column 7, lines 1-6). Regarding claim 72 and others, the anterior optic 42 having a refractive power less than 30 diopters and the posterior optic 44 having a refractive power of between -10 and -5 diopters would have been obvious from the aforementioned combined power range; from column 8, lines 53-58; and from the materials listed at column 7, lines 41-45. The ranges presented in instant claim 80 and others would have been obvious from Figure 10 and column 8, lines 53-58. Regarding claim 91: column 8, lines 30-34.

Claims 1-17, 27-39, 43-69, and 94 are allowed.

The Applicant’s remarks have been reviewed. However, the Applicant’s amendments necessitated the grounds of rejection being reverted to the position previously presented in the final Office action of January 27, 2005, since this view of the Sarfarazi teaching once again represents the best available art (MPEP § 706.02) relative to the current claims. A review of the Applicant’s disclosure (via US 2002/0107568 A1) indicates a lack of any definition (under

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MPEP § 2111.01) of what is meant by the anterior and posterior elements having different geometries (present claim 70, lines 16-18). Therefore, the term *different geometry* is given its broadest reasonable interpretation consistent with the specification (MPEP § 2111). The word *geometry* is defined as “[c]onfiguration” and as “[a] surface shape” (*Webster’s II New Riverside University Dictionary*, 1984). The posterior biasing element of Sarfarazi has a different configuration in that it extends posteriorly rather than anteriorly from an outermost point and has a different surface shape in that the anterior surface, for example, is concave rather than convex. Moreover, it is the Applicant’s burden to precisely define the invention, and not the examiner’s (*In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997)).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine

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McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Dave Willse
Primary Examiner
Art Unit 3738